

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

COLONIAL MECHANICAL CORPORATION

Employer

and

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND
PIPEFITTING INDUSTRY OF THE UNITED
STATES AND CANADA, AFL-CIO, LOCAL #10

Petitioner

Case 5-RC-14914

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{1/}
3. The labor organization involved claims to represent certain employees of the Employer.^{2/}
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) (7) of the Act for the following reasons:^{3/}

SEE ATTACHED

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 7, 1999**.

Dated November 23, 1999

at Baltimore, Maryland

Regional Director, Region 5



1/ Colonial Mechanical Corporation, a Virginia corporation with principal office and place of business at 3017 Vernon Road, Richmond, Virginia, is a contractor engaged in the installation and service of plumbing, HAVC mechanical and electrical systems for renovation and new construction. During the preceding twelve months, the Employer purchased and received at its Richmond, Virginia facility goods valued in excess of \$50,000 directly from locations outside the State of Virginia. The parties stipulated that the Employer is engaged in commerce within the meaning of the Act.

2/ The parties stipulated that Petitioner, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local #10, is a labor organization within the meaning of the National Labor Relations Act.

3/ At the hearing the Petitioner amended its petition and seeks to represent the following unit:

[A]ll plumbers, pipefitters, pipe welders, apprentices and helpers engaged in plumbing and pipefitting work employed in the pipe fabrication shop at the Employer's Vernon Road, Richmond, Virginia facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

According to the Petitioner there are approximately nine employees in its proposed unit. There is no history of collective bargaining between the Petitioner and the Employer.

The Employer initially took the position that the unit proposed by the Petitioner was not appropriate, that an appropriate unit would be all employees of the Employer who perform construction work in the State of Virginia excluding employees in the service department, approximately 350 employees. Later in the hearing, and in its brief, the Employer took the position that an appropriate unit would be all plumbers and pipefitters in the construction business of the Employer at all of its job sites and facilities excluding all other employees, guards and supervisors as defined in the Act. The record is unclear as to how many employees are in this proposed unit.

Robert Norton is CEO and President of "Construction Group," an administrative subdivision of the Employer. He testified that the Employer is a mechanical contractor which performs large new construction and renovation projects as well as servicing and maintaining them. The Employer employs individuals with craft skills including plumbers, pipefitters and pipe welders, sheet metal workers, millwrights and electricians as well as various helpers and apprentices.

The Employer's corporate headquarters are located at Vernon Road. At the back of the headquarters building is the pipe fabrication shop and the main sheet metal fabrication shop. The two shops are separated by a dividing wall, but a center bay between the two shops is considered flexible space for either shop. According to Norton,

the Employer has multiple sheet metal shop locations. There is an assembly shop on Ranko Road and a "call-in" shop located at the old Cabin John Shop. Eighty-five percent of all fabrication, however, is done in the field rather than the shops. The record does not reveal details of the operations at Ranko Road or Cabin John and it is not clear whether or not any pipe fabrication occurs at these two locations. The Employer maintains various satellite offices throughout the State of Virginia and operates at numerous construction sites.

The parties stipulated that Tim Foster, Pipe Superintendent, to whom employees in the pipe fabrication shop report, assigns work, transfers and disciplines employees and is a supervisor within the meaning of the Act. Foster reports to John Fidure, Fabrication Manager. The parties stipulated that Fidure is a supervisor. There are three sheet metal fabrication shop foremen, Roger Anderson, George Taylor, night shift and Danny Butler at Cabin John. Each construction project has a construction manager who oversee all trades. Larger projects have superintendents under the construction manager who also oversee all trades. Under the superintendents are foremen who Norton described as typically lead mechanics.

The pipe fabrication shop under Foster principally does pipe and plumbing fabrication but also does other types of welding, sheet metal supports, ladders and millwright type supports. Norton testified that there is no distinction between pipefitters that work in the field and pipefitters that work in the shop, that employees from that shop shift to the field, the sheet metal shop or to the other two fabrication shops and back. The number of employees working in the Vernon Road pipe fabrication shop varies from zero to an estimated maximum of fifteen employees. Pipefitters who work in the shop are certified to weld on "MIG," a type of welding usually done in the shop. Many of the pipefitters who work in the field are not MIG certified, but otherwise their skills are the same.

The Employer has an internal training program. It has an accredited apprenticeship for plumbers but not for pipefitters or pipe welders. According to Norton some of the employees are cross-trained as both plumbers and pipefitters. Plumbers and pipefitters who work in the field receive the same pay as those who work in the shop with the exception that plumbers working in Northern Virginia receive a higher rate. All of the Employer's employees receive the same benefits with vacation length based on tenure and wage rate.

Craig Younger, Mechanical Superintendent for the Employer, testified that certain types of tools and procedures are used more commonly in the shop while others are more commonly used in the field. Younger, who works in the field, described employees moving from the field to the shop and back as a constant revolving door explaining that he has had employees moved from his supervision to the shop and has had employees from the shop move to his jobs in the field. This interchange, he explained, reduces layoff and hiring.

Tim Foster has been with the Employer almost thirteen years and has both plumbing and pipefitting skills. He has supervised the pipe fabrication shop since August of 1998. Since that time the number of employees working in the pipe fabrication shop has fluctuated between one and fifteen with an average of four or five employees. During the past two or three months there have been nine to ten employees. He too describes the movement of employees from the shop to the field as a revolving door testifying that no one is permanently assigned to the pipe shop. While supervising the shop he himself has worked in the field installing work he had prefabricated, supervising a crew from the shop installing in the field and, when work is slow, taking measurements in the field. Additionally, employees not under his supervision frequently come into the pipe shop to perform small jobs.

Various employees called by the Employer testified that they had worked both in the pipe shop and in the field moving from one to the other on more than one occasion. One employee testified that he had worked in the pipe shop during the week and in the field on weekends while another testified that he worked in the field during the week and in the shop on weekends. One employee who does plumbing and pipefitting primarily in the field testified that in his seven and a half years with the Employer he had worked in the pipe shop approximately a dozen times, the last time for two and a half weeks. Most of these employee witnesses had worked in the field at a variety of locations outside the Richmond area.

Robert Davis called by the Petitioner testified that he has worked for the Employer for five years except for a six months lapse. Davis testified that he started as a helper in the shop moving up two years later to MIG welder and later receiving a "STEG" type welding certification. Additionally Davis did a sheet metal apprenticeship for one year in the sheet metal shop. Davis explained that he now works as a pipe welder and is teamed with a pipefitter who does the fitting. While Davis considers himself to be a shop employee, he frequently works in the field. When he was first employed he went with a crew into the field for a week. On another occasion he worked in the field for a month when there was no work in the shop. Two other times he went into the field for approximately three weeks. This year he spent a week in the field, went to the shop for one day and was sent back to the field where he work until the completion of the job in December 1999 or January 2000. Currently he earns an hourly wage of \$14.50 whether he is working in the shop or in the field.

Rickey Aldridge was also called as a witness by the Petitioner. He testified that he was employed by the Employer for three and a half years then quit. During his first period of employment he worked in the field as a pipe welder and also worked in the service department when there was a big layoff in the field. Two months after he quit he again sought employment with the Employer and was told that the only available opening was for MIG welder which required a test. He passed the test and was rehired about eleven months ago. He works in the shop but has been sent into the field four or five times since then for periods of from one day to a month and a half. According to Aldridge he is just "leased" to the field having been told when he passed the MIG test

that he had a permanent job in the shop. When working in the field, he does STIG welding working side by side with plumbers and pipe fitters who are not from the shop.

Aldridge testified that when asking Foster about a raise Foster told him that they were out of the weather and made less in the shop. Aldridge testified, however, he earns the same rate when working in the field or the shop.

CONCLUSION

Section 9(b) of the Act states:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.....

The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enf’d* 190 F.2d 576 (7th Cir. 1951); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Capital Bakers*, 168 NLRB 904, 905 (1968); *National Cash Register Co.*, 166 NLRB 173 (1967); *NLRB v. Carson Cable TV*, 795 F.2d 897 (9th Cir. 1986); *Dezcon, Inc.*, 295 NLRB 109 (1989). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-423 (4th Cir. 1962), *cert. denied* 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F.2d 478, 480 (10th Cir. 1962).

A petitioner’s desire as to unit is always a relevant consideration but cannot be dispositive. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *Airco, Inc.*, 273 NLRB 348 (1984). On the other hand, a proposed bargaining unit based on an arbitrary, heterogeneous, or artificial grouping of employees is inappropriate. *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Thus, when all maintenance and technical employees have similar working conditions, are under common supervision, and interchange jobs frequently, a unit including only part of them was found to be inappropriate. *United States Steel Corp.*, 192 NLRB 58 (1971).

Petitioner points to *CCI Construction Co.*, 326 NLRB No. 134 (1998), in support of its position. *CCI*, however, is the converse of the instant situation. There the Board upheld the Regional Director’s finding that a unit limited to sheet metal workers at CCI’s Pennsylvania job sites, excluding the shop employees, was appropriate. Initially the

union had petitioned for a unit of all sheet metal workers employer-wide. The Employer argued that its construction projects and fabrication shop were wholly independent entities and the union agreed to proceed to a job site only election. Employees at CCI's fabrication shop were not permitted to perform any installation in the field and the shop employees did not interact with field employees, which is not the situation here.

The work done by plumbers, pipefitters, pipe welders in the field is essentially the same as that done by plumbers, pipefitters, pipe welders done in the pipe fabrication shop. Wages and benefits are the same for plumbers, pipefitters, pipe welders when they work in the shop as when they work in the field. The only real difference appears to be that employees working inside the pipe fabrication shop are not subject to the same weather and dirt as employees working in the field.

More important, there is no separate definable group employed in the pipe fabrication shop at the Employer's Vernon Road facility as requested by the petition. It is clear from the record that employees regularly interchange between the pipe fabrication shop and the field, the pipe fabrication shop and the connecting sheet metal fabrication shop and the two other shops. One pipe welder testified that he also done a sheet metal apprenticeship with the Employer. Another of Petitioner's witnesses now in the pipe fabrication shop had previously moved from the field to the service department. The interchange is not merely occasional transfers. Here employees move from field to shop for periods of hours, days or months. In some instances employees work in the pipe fabrication shop during the week and in the field on weekends or vice versa.

In light of the foregoing, I find that a unit limited to plumbers, pipefitters, pipe welders, apprentices and helpers engaged in plumbing and pipefitting work employed in the pipe fabrication shop is not an appropriate unit. Petitioner has not indicated a willingness to proceed to an election in a unit other than that it has petitioned for. Therefore, the petition is hereby dismissed.